In the High Court of Punjab and Haryana at Chandigarh.

CWP No.10336 of 2004

Date of decision: 17.10.2007.

Dr. Jahan Singh ... Petitioner

Versus

The Registrar, M.D. University and another ..... Respondents

Present: Dr.Jahan Singh, petitioner-in-person.
Mr. B.L. Gupta, Advocate,for the respondents.

PERMOD KOHLI, J. (Oral)

This petition proceeds on certain admitted factual background. The petitioner herein joined the M.D. University, Rohtak, as Reader in Physics on 19.10.1977. His services were terminated on 20.06.1979. However, he was allowed to re-join on 05.10.1983 as a Reader. During this period, there was litigation between the parties and the matter went up to the Supreme Court. However, these facts are not relevant for the disposal of the present writ petition.

The petitioner after that sought extra-ordinary leave which was granted on 30.11.1983. The petitioner returned and joined the University on 14.08.1985. On 25.03.1991, the Executive Council of the University condoned the break in service from 20.06.1979 to 04.10.1983 and the petitioner was granted the consequential benefits of continuous service. Under the Promotion Scheme formulated by the U.G.C., namely, the Merit Promotion Scheme to remove the stagnation, the petitioner was considered

for promotion to the post of Professor in Physics by the Selection Committee. On consideration, the Selection Committee selected him and he was recommended for promotion vide Annexure P-7. Vide subsequent communication dated 19.02.1991 (Annexure P-8), the petitioner was promoted as Professor and kept on probation for a period of one year with effect from the date of joining. The promotion letter also incorporate a stipulation i.e. the Selection is subject to approval of the Executive Council. The petitioner joined as Professor on 19.02.1991. The University Council adopted a resolution No.49 in its meeting held on 25.03.1991 and approved the appointment of the petitioner under the Merit Promotion Scheme and communicated to the petitioner vide letter dated 10.04.1991. The petitioner continued to serve the University and retired on attaining the superannuation at the age of 60 years with effect from 31.01.2000. After his retirement, he was served with the impugned letter dated 06.07.2001 (Annexure P-17) whereby an amount of Rs.52422/- was ordered to be deducted from his retiral benefits on account of alleged excess payment for the period from April 1991 to December 1995 on account of promotion as Professor which was allegedly found to be in violation of the UG.C. guidelines as per the directions of the State Government conveyed vide letter dated 31.09.2000. It is stated that the amount has already been recovered from the retiral benefits of the petitioner. The petitioner being aggrieved of this recovery, has filed the present writ petition seeking following reliefs:-

> "1. That this Hon'ble Court may kindly be pleased to quash and to declare ab initio

null and void the respondents order dated 6.7.2001 (Annexure P-17).

2. That this Hon'ble Court may kindly be pleased to direct the respondents to refund an amount of Rs.52422/- (Rupees fifty two thousand four hundred twenty two only) with an interest @ 15% P.A. w.e.f. 6.7.2001 to the date of payment to the petitioner immediately as the said amount was wrongly and illegally deducted from the petitioner's due amount.

3. That this Hon'ble Court may kindly be pleased to direct the respondents to grant the consequential retiral benefits (Pension, Gratuity and Leave Encashment) and arrears of salary due to the non-existence of the University order dated 6.7.2001 (Annexure P-17).

4. That the certified copies and fair type of the Annexures may kindly be dispensed with.

5. That the photo-copies of the

Annexures may kindly be accepted/allowed.

6. That the prior notice to the respondents may kindly be dispensed with.

7. That the cost of the petition may kindly be awarded to the petitioner."

This petition is resisted by the University, primarily, on the ground that the petitioner's promotion was in violation of the U.G.C. guidelines. According to the respondents, the petitioner had not completed eight years of continuous service at the time of his promotion as Professor. It is further the case of the respondents that the State Government at the time of the revision of pay scales, constituted a High Level Committee and the Committee was also required to review the appointments made in the University. The said Committee had submitted its report on 21.09.2000, wherein, inter-alia, it was recommended that the appointment of the petitioner was illegal as he had not completed eight years of service. Based upon this recommendation of the Committee, the amount in question has been deducted from his retiral benefits.

I have heard the learned counsel for the parties at length and perused the record of the case.

The short point which needs consideration is whether the respondent-University is entitled to affect recovery from the retiral benefits

of the petitioner after his retirement. It is the admitted position on record that the petitioner retired on 31.01.2000. Till then, there was neither any report of the Committee nor any order for affecting recovery had been passed. The High Level committee had submitted its recommendation/report only on 21.09.2000. By then, the petitioner had already retired from service on attaining the age of superannuation. It is also not in dispute that the petitioner got promotion on the basis of the selection by a competent and duly constituted Committee of the University and his promotion was duly approved by the competent authority. It is not the case of the respondents that the petitioner secured promotion on account of any mis-representation or fraud, rather the case of the respondents is that due to mistake the petitioner was granted promotion. At least, the petitioner cannot be attributed any act of omission or commission for grant of such promotion. No enquiry whatsoever was held during the period he remained in service. The case of the petitioner is squarely covered by a judgment rendered in the case of Sahib Ram Vs. State of Haryana, 1995 (1) SCT, 668, wherein the Apex Court has made the following observations:-

> ".....Since the date of relaxation the appellant had been paid his salary on revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of higher pay-scale was given to him but by wrong construction made by the Principal for which the appellant

cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

Learned counsel appearing for the respondents has brought to my notice a judgment of the Apex Court in the case of Union of India and others Vs. Smt.Sujatha Vedachalam and another, 2000 (3), R.S.J., 47. In this case, the Hon'ble Apex Court had upheld the recovery against an employee of the Andhra Pradesh Government and ordered the payment of the amount in instalments. I have carefully gone through the judgment aforesaid. No proposition of law has been laid down by the Apex Court. This judgment was given in the peculiar facts and circumstances of that case, whereas in Sahib Ram's case (supra), the Hon'ble Supreme Court has clearly laid down a proposition of law which applies to the facts of the present case. Learned counsel has also referred to another order dated 05.01.2005 passed by a learned Single Judge of this Court making a reference to the Larger Bench on the question whether a government servant is liable to pay the amount received by him during his service. There is nothing on record to show that whether the request for reference to the Larger Bench has been accepted or not. Be that as it may, the field is squarely covered by a judgment of the Apex Court in Sahib Ram's case (supra). Except the challenge to the impugned order and prayer for refund of the amount with interest, the petitioner who has argued the case himself, withdraws all other prayers made in the writ petition.

In view of the above, the present petition is allowed. Order dated 06.07.2001, (Annexure P-17), whereby an amount of Rs.52422/- has been deducted from the retiral benefits of the petitioner, is hereby quashed and the respondent-University is directed to refund the amount aforesaid to the petitioner within a period of three months, with interest at the rate of 6% p.a. from the date of his retirement till the amount is actually refunded. No costs.

17.10.2007. (PERMOD KOHLI)
BLS JUDGE

Note: Whether to be referred to the Reporter? YES/ NO